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3 November 1995

Meredith J. Jones, Esq.
Chief, Cable Services Bureau
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **Requests for Clarification and Waiver of
Requirements for Completion of FCC Form 1240
("Annual Updating of Maximum Permitted Rates for
Regulated Cable Services"), MM Docket No. 92-266.**

Dear Ms. Jones:

This letter is submitted on behalf of several of our cable operator clients to request that the Cable Services Bureau confirm that the six interpretations of the instructions and requirements relating to the Commission's recently-announced and soon-to-be-released FCC Form 1240 ("Annual Updating of Maximum Permitted Rates for Regulated Cable Services") set forth below are reasonable. We believe that these interpretations are consistent with the principles and purposes set forth in the Commission's *Thirteenth Order on Reconsideration* in MM Docket No. 92-266 (FCC 95-397, rel. 22 Sept. 1995). The Bureau's early confirmation of that belief will help to avoid misunderstandings and will contribute to the quick and efficient implementation of FCC Form 1240.

The final item in this letter is a request for a waiver, for first-time filers of FCC Form 1240, of the instructions and requirements applicable that form so as to prevent what we believe to be an unintended "gap period" in cost recovery.

1. **Module B: Subscribership.**

Line B2 requires the cable operator to enter its "projection of the average number of subscribers on [its] system during the Projected Period." The instructions do not

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Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000
Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

Meredith J. Jones, Esq.
3 November 1995
Page 2

specify how the projected subscriber count is to be calculated. We request confirmation that one reasonable method to calculate the Line B2 projected average subscriber count is to do so on the basis of the most recent twelve-month period of historical subscriber growth information available at the time preparation of the form is begun.

2. Module G: True-up Award.

The instructions to Lines G1 and G5 in Module G of FCC Form 1240 require entry of "the total revenue you collected". If this were construed to mean the actual amount shown after closing the accounting books for the relevant period, that would impose a tremendous administrative burden on cable operators and result in delays in filing.

We therefore request confirmation that it is a reasonable construction of the instructions for Lines G1 and G5 in Module G to enter as "total revenue collected" amounts calculated as follows:

Line G1: Multiply the average number of subscribers during the true-up period (Line B1) by the actual rate in effect during the period, and then multiply the product of that calculation by the number of months eligible for interest (Line E4).

Line G5: Multiply the average number of subscribers during the true-up period (Line B1) by the actual rate in effect during the period, and then multiply the product of that calculation by the number of months ineligible for interest (Line E5).

If there was a rate change during the true-up period, a weighted average rate for the period would be calculated and used as the actual rate in effect (with an appropriate explanation).

3. Worksheet D: Residual.

We request confirmation that the instructions for Worksheet D require, as a practical matter, that the actual rate in effect during the true-up period (as shown on the applicable FCC Form 1210 or FCC Form 1240) be entered on Line

Meredith J. Jones, Esq.
3 November 1995
Page 3

1 of Worksheet D and be the basis for the entries on Lines 2, 3, 5, and 6.

4. Worksheet G: External Costs.

Preparation of Worksheet G for the Projected Period requires cable operators to calculate projected changes in programming costs. Paragraph 73 of the Commission's 22 September 1995 *Thirteenth Order on Reconsideration* in MM Docket No. 92-266 indicates that projected changes certainly include licensing fees (and retransmission consent fees) expressly provided for in contracts between cable operators and program providers. We understand the category of "reasonably certain and reasonably quantifiable" changes in programming costs to include not only licensing fee changes expressly quantified in contracts but also those expected to arise from adjustment formulas (such as CPI-based formulas) set forth in programming contracts and those that, based on historical experience in the relationship with a given programmer, are reasonably certain to occur. We request that the Bureau confirm that the foregoing understanding of the requirements for completion of Worksheet G is reasonable.

5. Filing of FCC Form 1210.

In those instances in which the cable operator is required to file an FCC Form 1210 for the period through 30 June 1995, we understand the instructions to permit the filing of the FCC Form 1210 simultaneously with (and as an attachment to) the FCC Form 1240. We request that the Bureau confirm the reasonableness of that understanding.

6. Module H: New Maximum Permitted Rate.

We interpret the instructions effectively to require that the entry on Line H8 of FCC Form 1240 be calculated by dividing the Total True-up Award (Line G9) by the projected number of subscribers (Line B2), and then dividing the product of that calculation by 12 (the number of months in the Projected Period over which the award will be recovered). We request the Bureau's confirmation of the reasonableness of that interpretation.

Meredith J. Jones, Esq.
3 November 1995
Page 4

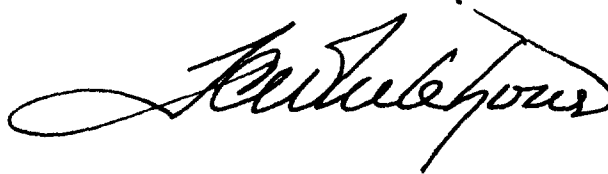
**7. Request for Waiver to Avoid Unintended and Unrecoverable
"Gap Period" For First-time Filers of FCC Form 1240.**

The requirement that rate increases justified on FCC Form 1240 not take effect until 90 days after the form is filed could create a permanently unrecoverable "gap period" of at least 90 days for first-time filers of the form. That would occur if the historical costs supporting the new rates are cut-off on the filing date but implementation is delayed until 90 days later. This presumably unintended disincentive to use FCC Form 1240 could be avoided if the requirements set forth in the instructions are waived to permit first-time filers of FCC Form 1240 to include projected cost increases attributable to the 90-day period between the filing date and the effective date. We therefore request that the Bureau provide by waiver that first-time filers of FCC Form 1240 may include projected costs attributable to the period between the filing date and the effective date if a separate calculation and explanation of the basis for such costs is submitted.

* * * * *

Given the imminent release of FCC Form 1240, we would greatly appreciate an expedited response to these requests. We and our interested clients would be pleased to answer any questions that arise, and to provide any further information that might be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Jones", written in black ink.

cc: Mr. William F. Caton,
Acting Secretary,
Federal Communications Commission